

**SO ORDERED.**

**SIGNED this 17 day of November, 2021.**



  
Joseph N. Callaway  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION**

**IN RE:** )  
 )  
**RUBEN MARIO PENA, JR.,** ) **CHAPTER 13**  
 )  
 )  
**DEBTOR.** ) **CASE NO. 18-04935-5-JNC**

**CONSENT ORDER GRANTING MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY**

THIS CAUSE comes on before the Court upon the Motion For Relief From The Automatic Stay (the "Motion") filed herein on behalf of Performance Finance ("Performance"), a division of Evergreen Bank Group. The Debtor desires to surrender the Vehicle to Performance and the parties have agreed to resolve the Motion on the terms set forth herein as evidenced by their respective signatures set forth below. After having reviewed the Motion and the record in this case, the Court makes the following:

**FINDINGS OF FACT**

1. The Debtor commenced this case by the filing of a Chapter 13 petition on October 9, 2018.

2. On or about October 21, 2016, the Debtor borrowed the sum of \$15,067.01 pursuant to the terms of that certain Promissory Note, Disclosure And Security Agreement of even date (the "Contract").

3. Under the terms of the Contract, Performance was granted a senior security interest in that certain 2016 Indian Chief Dark Horse Motorcycle, VIN 56KCCDAA6G3340422 (the "Vehicle"), which it duly perfected.

4. As of October 18, 2021, the net payoff amount due under the Contract was \$5,895.17. At the same time, the base NADA wholesale value of the Vehicle was approximately \$9,385.00.

5. The Debtor desires to surrender the Vehicle to Performance and Performance seeks relief from stay in order to obtain possession of and dispose of the Vehicle.

Based upon the above facts, this Court finds that there is cause under 11 U.S.C. §362(d)(1) to grant the Motion.

IT IS THEREFORE HEREBY ORDERED as follows:

1. That the automatic stay of 11 U.S.C. §362 is lifted and modified to permit Performance to obtain possession of and sell the Vehicle pursuant to applicable law.

2. That the 14-day stay provided for in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is hereby waived and the lifting of the automatic stay pursuant to the terms of this Consent Order shall be effective immediately.

3. That the Debtor is ordered to release the Vehicle to Performance or advise it of the location of the Vehicle and the name, address, and telephone number of any third party in possession of the Vehicle.

4. That Performance is hereby permitted 120 days from entry of this Consent Order to file a general unsecured (deficiency claim) for any amounts remaining due under the Contract after sale of the Vehicle.

5. That time is of the essence as to each and all of the provisions of this Consent Order.

6. That this Court retains jurisdiction over this matter, the parties hereto, and the subject matter hereof, to the extent permitted under applicable law, for the entry of such other and further orders as are either necessary or appropriate to accomplish the foregoing.

SIGNATURES ON NEXT PAGE

**CONSENTED TO AND ACCEPTED:**

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.

By:/s/ *Pamela P. Keenan*

Pamela P. Keenan  
N.C. State Bar No. 20328  
Attorneys for Performance Finance  
P. O. Box 19766  
Raleigh, NC 27619-9766  
Telephone: (919) 848-0420  
Facsimile: (919) 848-8755  
Email: pkeenan@kirschlaw.com

SMITH DICKEY DEMPSTER CARPENTER & HARRIS

By: /s/ *Mark M. Harris*

Mark M. Harris  
N.C. State Bar No. 31573  
Attorney for Debtor  
309 Person St.  
Fayetteville, NC 28302  
Telephone: (910) 484-8195  
Facsimile: (910) 484-4335  
Email: bksmithdickey@gmail.com

JOSEPH A. BLEDSOE, III

By: /s/ *Joseph A. Bledsoe, III*

Joseph A. Bledsoe, III  
N.C. State Bar No. 19817  
Chapter 13 Trustee  
PO Box 1618  
New Bern, NC 28563  
Telephone: (252) 633-0074  
Email: chapter13@bledsoe13.com

END OF DOCUMENT